

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 05-767 (DSD/SER)

United States of America,

Petitioner,

v.

ORDER

Calvin Wedington,

Respondent.

This matter is before the court upon the objections by respondent Calvin Wedington to the March 15, 2013, report and recommendation of Magistrate Judge Steven E. Rau. In his report, the magistrate judge recommends that the court deny Wedington's 18 U.S.C. § 4247(h) motion for release from treatment. Wedington objects, arguing that he is not suffering from a "mental disease or defect" and that his continuing commitment is improper. See Resp't's Objections 1-2. The court reviews the report and recommendation of the magistrate judge *de novo*. 28 U.S.C. § 636(b) (1) (C); Fed. R. Civ. P. 72(b) (3); D. Minn. LR 72.2(b).

Wedington is a federal prisoner who was sentenced to life imprisonment for second-degree murder in 1982. On June 2, 2005, this court committed Wedington to FMC-Rochester for treatment pursuant to 18 U.S.C. § 4245. On December 5, 2012, through court-appointed counsel, Wedington filed the instant motion, seeking a hearing to determine whether he "is suffering from a mental disease or defect as a result of which he is in need of custody for care or treatment in a suitable facility" and whether he may be discharged.

See 18 U.S.C. § 4247(c)(4)(E), (h). On January 8, 2013, the magistrate judge conducted a hearing, and Wedington and the Chief of Psychology at FMC-Rochester testified.

The court has carefully reviewed the report and recommendation *de novo*. Based on the evidence received at the hearing, including Wedington's ongoing delusions that he was pardoned by President Clinton and served as a United States Marshal, his lack of awareness of his mental illness, his other serious health conditions and his history of deteriorating mental health upon ceasing treatment, the court finds by a preponderance of the evidence that Wedington suffers from a mental disease and remains in need of treatment in a suitable facility. Although the court commends Wedington for his progress, the record indicates that FMC-Rochester is an appropriate facility. Therefore, the court adopts in full the magistrate judge's thorough and well-reasoned report and recommendation.

Accordingly, **IT IS HEREBY ORDERED** that:

1. Wedington's objections to the magistrate judge's report and recommendation [ECF No. 71] are overruled; and
2. The magistrate judge's report and recommendation [ECF No. 68] is adopted in full.

Dated: April 30, 2013

s/David S. Doty
David S. Doty, Judge
United States District Court